

OPEN SESSION

AGENDA ITEM

41 MAY 2018

DATE: May 18, 2018

TO: Members, Board of Trustees

FROM: Leah T. Wilson, Executive Director

SUBJECT: Executive Director's Report

The bulk of this meeting's Executive Director's Report will be provided orally; I plan to use the time to demonstrate the Strategic Plan progress tracking mechanism that is being developed and which will ultimately be incorporated into the dashboards prepared for the Board on a bi-monthly basis. The Strategic Plan contains 44 discrete objectives, many of which reflect complex projects or initiatives requiring the commitment of significant human and fiscal resources. Immediately below you will find a brief overview of the 2019 fee bill which, as you will note, outlines a number of new requirements for the State Bar. Although this was originally slated to be a "clean" fee bill year, the bill as currently drafted will require the Bar to undergo an extensive financial, operational, and performance review as a condition precedent to any discussion of a licensing fee increase, develop a new program allowing for pro bono service to substitute for MCLE, and diversity planning and evaluation. Our organizational capacity to achieve Strategic Plan goals and objectives, as well as to successfully deliver on these new efforts, will be a topic of discussion in the coming months.

In addition to the fee bill we have been responding to a number of other legislative proposals. The process has been fast-paced and highly fluid. A resounding "thank you!" goes out to Board members who have been actively assisting us along the way. Because of nature of this process which does not comport with the Board's meeting schedule, it has been challenging to keep you fully apprised of the intensive work that has been taking place on the legislative front over the last few months. In an effort to remedy this I have outlined key fee bill provisions below. An update on all of the bills we have been tracking, responding to, or working on, is provided as an attachment.

2019 Fee Bill

Licensing Fee Amount: Status Quo

2019 Performance Audit: Pursuant to existing statutory provisions, the State Auditor conducts a performance audit of the State Bar every two years. For 2019 performance audit parameters include:

- The audit shall evaluate each program or division of the State Bar receiving support from the annual State Bar licensing fees and other fees required of active and inactive licensees.

- The audit shall, at minimum, include the following for each program or division:
 - An assessment of how much fee revenue, staff, and resources are currently budgeted and subsequently expended to perform existing tasks and responsibilities.
 - An assessment of whether the State Bar has appropriate program performance measures in place and how these measures are used for budgeting purposes.
 - An assessment of the usage of real property owned by the State Bar.
 - A review of the State Bar's cost allocation plan used to allocate administrative costs.
 - A review of any proposals for additional funding or resources requested by the State Bar to determine whether these proposals are necessary to meet the State Bar's public protection function, as well as the accuracy of identified associated funding needs, after reviewing how existing resources are used.
 - A calculation of how much fee revenue would be needed from each State Bar active and inactive licensee to fully offset State Bar costs to perform existing tasks and responsibilities and to support additional proposed expenditures determined to be necessary to meet the State Bar's public protection function. This calculation shall take into account any proposed business process reengineering, reallocations, or efficiencies identified by the California State Auditor.
- The 2019 audit shall be submitted by May 1, 2019.
- The Legislative Analyst's Office shall assess whether the State Bar effectively utilizes licensing fee revenues to maximize service levels for each program or division assessed by the California State Auditor. The Legislative Analyst's Office shall submit this report to the Legislature by July 1, 2019.

Redirection of \$1 of LAP Fees: \$1 of the \$10 mandatory LAP fee will be allocated to a non-profit entity with 25 years or more of experience providing substance abuse treatment services to attorneys.

Pro Bono Substitution for MCLE: The bill requires the State Bar to establish rules that will allow for the substitution of a certain number of MCLE hours with pro bono service.

Diversity as part of State Bar Mission: The bill clarifies that diversity is a part of the State Bar's mission and includes a number of diversity-related goals. It requires the State Bar to develop a plan to effectuate those goals and to evaluate the effectiveness of related efforts. The bill specifically requires that an assessment of the impact of the bar exam cut score on diversity be included in the evaluation.

State Bar Proposed Legislation: the vast majority of the State Bar's legislative proposals have been approved. These proposals span a wide range of areas including discipline, bar exam registration timelines, collections, and State Bar reporting requirements.

Technical Changes: The word licensee has been substituted for member throughout the bill.

Michael, Dag and I are working closely with the Bar's legislative advocate, the Supreme Court, and legislative stakeholders to finalize bill language as it moves to the next step in the process, the Appropriations Committee. The bill is being heard in Appropriations this year as a result of State Bar amendments designed to enhance our ability to collect debt owed to the Bar. After Appropriations the bill will move to the Senate Judiciary Committee.

Attachment A
State Bar Legislative Proposal Tracking
May 11, 2018 Board of Trustees Update

At its January meeting, the Board established criteria for taking positions on legislation and advancing legislative proposals. At subsequent meetings, the Board approved a number of legislative priorities for staff to advance.

Most of the changes that the Bar sought have been incorporated into legislative amendments that are proposed in this year's fee bill, Assembly Bill 3249. AB 3249 was passed out of the Assembly Judiciary Committee on May 8 and will need to pass through the Appropriations Committee before moving to the Senate.

Below is a summary of the status of the Bar's proposals. At this [link](#) you can find the full, marked-up text of AB 3249. Following this summary of the Bar's approved priorities is a review of additional, proposed legislation that affects the Bar.

Board Approved Legislative Priority	Status
Technical clean-up to eliminate vestiges of the associational work of the Bar and reinforce its regulatory focus	Incorporated into proposed legislation
Technical changes to the start of the term of members of the Board to provide greater flexibility to appointing authorities to ensure a fully staffed Board	Incorporated into proposed legislation
Technical changes updating statutes enacted prior to the creation of the State Bar Court, eliminating outdated and inaccurate references to the role of the Board and the State Bar Court	Incorporated into proposed legislation
Amend the Revenue and Taxation Code to expand the court-ordered debt collection program to cover discipline costs and Client Security Fund repayments and provide greater latitude to the Bar to work with private, third-party vendors Franchise Tax Board	Incorporated into proposed legislation
Clarification of the statutes for enrolling attorneys as involuntary inactive, summary disbarment, and reimbursement of Client Security payments	Incorporated into proposed legislation
Amending the Business and Professions Code to allow Lawyer Assistance Program funds to be used for treatment for those who cannot afford to pay, and movement of the final filing deadline for the California Bar Examination up to allow sufficient time to process accommodation requests	Incorporated into proposed legislation
Changes to various reporting requirements in an effort to consolidate and rationalize various mandatory reports produced by the Bar	Partially incorporated into proposed legislation
Modification of the \$10 fee imposed on active attorneys for the Lawyer Assistance Program to set aside one dollar of the fee for a non-profit entity that provides anonymous assistance to attorneys for substance abuse related problems	Incorporated into proposed legislation
Modification of statutes requiring the permanent retention of State Bar records	Not incorporated into proposed legislation

The Bar has also been actively monitoring a wide range of proposals that affect the Bar. These proposals and their current status are summarized below.

Proposed Legislation	Status
<p>AB 3047 (Daly) – Court fees: waiver: Indian Child Welfare Act</p> <p>Current law establishes fees for various court filings, including a \$500 fee for filing in superior court an application to appear as counsel pro hac vice and a fee for the annual renewal of that application. This bill would waive the fee and renewal fee for filing pro hac vice when the applicant is an attorney representing a tribe in a child welfare matter under the federal Indian Child Welfare Act.</p>	<p>Passed to the Senate. Awaiting referral to a policy committee.</p>
<p>AB 3076 (Reyes) – Indian child welfare: legal services</p> <p>Would, subject to funding in the annual Budget Act, require the State Department of Social Services to provide grants to qualified nonprofit legal services organizations to provide legal services to Indian tribes in, and legal training and technical assistance to eligible nonprofit organizations regarding, child welfare matters under the Indian Child Welfare Act. The bill would require that the grants be provided only to qualified nonprofit legal services organizations that meet specified requirements, including specified years of related experience and meeting the requirements to receive funding from the Trust Fund Program administered by the State Bar of California.</p>	<p>In Assembly Appropriations.</p>
<p>AB 3204 (Gray) – Attorneys: mandatory pro bono legal service</p> <p>Would require each member of the State Bar to annually complete a minimum of 25 hours of pro bono legal service. The bill would create an exception to that requirement for acting judges, inactive members, members currently working for a legal aid organization, members who earned less than a certain amount the previous year, and members who are newly admitted to the State Bar. The bill would also permit a member, as an alternative to providing the 25 hours of pro bono legal service, to contribute \$500 per year to the State Bar to support legal services to indigent persons.</p>	<p>Author dropped the bill in exchange for language in the fee bill that will allow attorneys to satisfy some or all of their MCLE hours by doing pro bono work for legal services providers. Language will direct the State Bar to enact a rule that would set forth the details of this program, including the hours eligible for substitution, certification of MCLE pro bono providers and funding for this new mandate.</p>
<p>AB 3249 – This year’s fee bill leaves the licensing fee at the same level that it was last year – \$315 – but includes a number of important provisions that will affect the Bar beyond those proposed by the Bar.</p> <p>The most important of those proposed changes are:</p> <ol style="list-style-type: none"> 1. Audit: Directing in next year’s existing bi-annual state audit to evaluate 	<p>Incorporated into proposed legislation</p>

<p>each program or division receiving support from mandatory fees, including a review of current expenditures of fee revenue, staff and resources, an assessment of whether the Bar has appropriate program performance measures in place, an assessment of the Bar's usage of owned real property, a review of the Bar's cost allocation plan, a review of proposals of new funding or resources and whether they serve the Bar's public protection mission, a calculation of how much fee revenue would be needed for existing and future projects that serve its mission. The audit is due May 1, 2019. The LAO shall also review whether the Bar is effectively using licensing fee revenue. The LA shall submit its report by July 1, 2019.</p> <ol style="list-style-type: none"> 2. Diversity: require the State Bar to biannually report to the Legislature its diversity plan and implementation, including activities, outcomes and effectiveness. The first report is due March 15, 2019. 3. Pro Bono: directing the Bar to create a rule that would allow attorneys to satisfy some or all of their MCLE hours by doing pro bono work for legal service providers. 	
<p>SB 785 (Weiner) – Evidence: immigration status Current law provides that all relevant evidence is admissible in an action before the court, including evidence relevant to the credibility of a witness or hearsay declaring, subject to specified exceptions. Current law also provides that, in civil actions for personal injury or wrongful death, evidence of a person's immigration status is not admissible and discovery of a person's immigration status is not permitted. In civil actions other than those specified above, this bill would prohibit the disclosure of a person's immigration status in open court by a party unless the party seeking the disclosure first requests a confidential in camera hearing and the presiding judge determines that the evidence is relevant and admissible.</p>	<p>In Senate. Awaiting final Senate concurrence vote on the floor</p>
<p>SB 954 (Wieckowski) - Mediation Confidentiality Would require an attorney representing a person participating in a mediation or a mediation consultation to inform his or her client of the confidentiality restrictions related to mediation, as specified, and to obtain informed written consent from the client that he or she understands the restrictions before the client participates in the mediation or mediation consultation.</p>	<p>Set for hearing in Senate Judiciary May 8th</p>
<p>SB 1425 (Hueso) – Diversity in the legal profession The State Bar Act provides for the licensure and regulation of attorneys by the State Bar of California, a public corporation governed by a board of trustees. The act provides that protection of the public is the highest priority of the State Bar of California and the board of trustees in exercising their licensing, regulatory, and disciplinary functions. This bill would express the intent of the Legislature to enact legislation that would diversify the legal profession.</p>	<p>Not moving this year.</p>
<p>AB 1987 (Lackey) - Discovery: post-conviction This bill has been amended to add to the duties of an attorney the duty to, in</p>	<p>Status: In Assembly Appropriations</p>

criminal matters involving a conviction resulting in a sentence of 15 years or more for a serious or violent felony, to retain a copy of client files for the term of his/her imprisonment.	Watching this bill because it adds a new duty under BPC 6068.
<p>AB 3217 (Berman) - Legal services: advertising</p> <p>Would require under the Unfair Competition Law that an advertisement for legal services soliciting clients who may allege an injury from a prescription drug to include a statement advising the client not to stop taking the medication. This bill would also prohibit a person to use, cause to be used, obtain, sell, transfer, or disclose to another person without written authorization, protected health information, as defined, for the purpose of soliciting an individual for legal services.</p>	<p>Status: Set for hearing in Assembly Judiciary May 8th</p>